

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

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| In the Matter of |) | CASE NO. OSH 2004-12 |
| |) | |
| DIRECTOR, DEPARTMENT OF LABOR |) | ORDER NO. 113 |
| AND INDUSTRIAL RELATIONS, |) | |
| |) | PRETRIAL ORDER |
| Complainant, |) | |
| |) | |
| vs. |) | |
| |) | |
| DEPARTMENT OF BUSINESS, ECONOMIC |) | |
| DEVELOPMENT & TOURISM, State of |) | |
| Hawaii, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

PRETRIAL ORDER

Pursuant to the representations of counsel for the respective parties at an initial conference held by the Hawaii Labor Relations Board (Board) on November 23, 2004, IT IS HEREBY ORDERED THAT:

1. The issues to be determined are:
 - (a) Whether Respondent violated 29 CFR § 1926.1101(c)(1) as described in Citation 1, Item 1a, issued on August 30, 2004?
 - (i) Whether or not 29 CFR § 1926.1101(c)(1) applies?
 - (ii) Whether or not 29 CFR §§ 1926.1101(c)(1) was violated at the time of the inspection?
 - (iii) Whether or not Respondent knew or should have known about the allegedly violative condition at the time of inspection?
 - (iv) Whether Respondent is liable for the allegedly violative condition?
 - (v) If 29 CFR § 1926.1101(c)(1) was violated as alleged, whether or not the citation for such alleged violation is appropriate?

- (b) Whether Respondent violated 29 CFR § 1926.1101(c)(2) as described in Citation 1, Item 1b, issued on August 30, 2004?
 - (i) Whether or not 29 CFR §1926.1101(c)(2) applies?
 - (ii) Whether or not 29 CFR § 1926.1101(c)(2) was violated at the time of the inspection?
 - (iii) Whether or not Respondent knew or should have known about the allegedly violative condition at the time of inspection?
 - (iv) Whether Respondent is liable for the allegedly violative condition?
 - (v) If 29 CFR § 1926.1101(c)(2) was violated as alleged, whether or not the citation for such alleged violation is appropriate?

2. The relevant deadlines established are:

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| Dispositive motions due | December 23, 2004 |
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| Responses to motions due | January 12, 2005 |
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| Unnamed and live witness identification, and identification of expert and exchange of reports | February 25, 2005 |
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| Discovery cut-off | January 24, 2005 |
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- 3. The Board will conduct a hearing on any dispositive motions on January 14, 2005 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.
- 4. Trial is scheduled for three days commencing on March 24, 2005 at 9:30 a.m. in the Board's hearing room.
- 5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. DEPARTMENT
OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM, STATE OF HAWAII
CASE NO. OSH 2004-12
ORDER NO. 113
PRETRIAL ORDER

DATED: Honolulu, Hawaii, November 30, 2004.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Margaret S. Ahn, Deputy Attorney General